

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:98CR199
)	
v.)	
)	
ANTHONY HARDY,)	MEMORANDUM OPINION
)	
Defendant.)	
_____)	

This matter is before the Court on defendant's "Motion for Relief, Petitioner Eighth Amendment Was Violated" (Filing No. 122), filed on July 6, 2005. Upon review, this motion will be construed as a successive motion under 28 U.S.C. § 2255 to vacate, set aside or correct sentence.

The defendant entered a plea of guilty to an indictment charging him with a conspiracy to distribute or possess with intent to distribute a substance containing crack cocaine. He was sentenced on April 11, 2000, to a term of imprisonment for one hundred eighty-eight (188) months, followed by five years of supervised release with special conditions. On April 21, 2000, defendant filed a notice of appeal with the United States Court of Appeals for the Eighth Circuit, and on May 22, 2001, the Court of Appeals for the Eighth Circuit filed an opinion affirming defendant's sentence.

On March 11, 2002, defendant filed motion for an order to correct the presentence report and accordingly modify his

sentence, and on April 25, 2002, that motion was denied. On September 23, 2002, defendant filed a motion pursuant to Title 28, U.S.C. § 2255, to modify and/or correct his sentence. Following some intermediary motions, this motion was denied on January 30, 2003 (Filing No. 109).

On April 18, 2005, defendant filed a motion pursuant to Federal Rule of Criminal Procedure 12(b), relying on a rule of procedure applicable only to motions filed before trial and not to post-trial motions. The motion was denied (Filing No. 117).

On June 27, 2005, defendant filed a motion pursuant to 28 U.S.C. § 2255. It was a second motion filed pursuant to 28 U.S.C. § 2255, which is not permitted without having obtained prior permission from the United States Court of Appeals. No such permission had been granted. Therefore, the motion was denied (Filing No. 121).

The present motion asserts violations of the Eighth Amendment and seeks retroactive relief under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), and *United States v. Booker*, 125 S. Ct. 738 (2005). Such claims are appropriately raised pursuant to 28 U.S.C. § 2255. This motion is construed as a third motion filed pursuant to 28 U.S.C. § 2255, which is not permitted without having obtained prior permission from the United States Court of Appeals. No such permission has been granted. Therefore, this motion must be

denied. A separate order will be entered in accordance with this memorandum opinion.

DATED this 8th day of July, 2005.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court